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November 5, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 11, 2007

Case Number: TSO-0501

This decision concerns the eligibility of XXXXX X. XXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup>

**I. BACKGROUND**

The present case involves an individual whose DOE access authorization has been suspended. A Local Security Office (LSO) conducted an investigation of the Individual's background in order to determine his eligibility to maintain a DOE access authorization. That investigation revealed that the Individual had been diagnosed as alcohol dependent in 1993 and had been hospitalized on three different occasions for alcohol treatment. This information raised substantial doubt about the Individual's eligibility to maintain a DOE access authorization. Accordingly, a Personnel Security Interview (PSI) of the Individual was conducted on August 22, 2006.<sup>2</sup> When this PSI failed to resolve these security concerns, the LSO asked the Individual to submit to an examination by a DOE Psychologist. On October 11, 2006, the DOE Psychologist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychologist reviewed selected portions of the Individual's security file. Tr. at 80. On October 11, 2006, the DOE Psychologist issued a report in which he opined that the Individual met the criteria for alcohol dependence set forth in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR). DOE Exhibit 14 at 9. The DOE Psychologist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his alcohol dependence. *Id.* at 10. In addition, the DOE Psychologist further opined that, while the Individual does not meet the DSM-IV-TR criteria for antisocial personality disorder, he does exhibit "antisocial traits." *Id.*

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

<sup>2</sup> The transcript of this PSI appears in the Record as DOE Exhibit 28.

The LSO concluded that the Individual failed to resolve the substantial doubt about his eligibility for a DOE access authorization raised by his alcohol dependence diagnosis and antisocial traits.

Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for an access authorization (the Notification Letter). The Notification letter alleges that the Individual has

Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8(j) (Criterion J), [and]

An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability, 10 C.F.R. § 710.8(h) (Criterion H).

On May 31, 2007, the Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer on June 1, 2007.

I conducted a hearing in this case within the regulatory time period prescribed by 10 C.F.R. Section 710.25(g). At the hearing, the LSO presented one witness: the DOE Psychologist. The Individual presented one character witness. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0501 (hereinafter cited as "Tr.").

## **II. STANDARD OF REVIEW**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol dependence raises significant security concerns under Criteria J and H. *See, e.g., Personnel Security Hearing, Case No. VSO-0079*, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing, Case No. VSO-0042*, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing, Case No. VSO-0014*, 25 DOE ¶ 82,755 (1995) (affirmed by OSA, 1995). In these proceedings, Hearing Officers have found that an individual's excessive use of alcohol might impair his judgment and reliability and his ability to control impulses. The Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information note that "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Guideline G of the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The Whitehouse. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

The Individual disputes the DOE Psychologist's diagnosis of alcohol dependence. At the hearing, the Individual unambiguously denied that he had an alcohol problem. Tr. at 89.

However, the DOE Psychologist's diagnosis of alcohol dependence is well supported in the record. On June 22, 1991, the Individual was admitted to a hospital for treatment of an adjustment disorder and a depressed mood. DOE Exhibit 16 at 1. The admitting physician noted that the Individual had been using alcohol to excess. *Id.* The admitting physician also noted that the Individual's liver function tests were elevated "due to alcohol excess" and further noted that the Individual was "here to also detox from alcohol." *Id.* at 2. The June 25, 1991, discharge summary for the Individual's first hospitalization indicates that the Individual was "admitted with a chief complaint of inability to stop drinking which led to separation from wife." *Id.* at 11. The discharge summary further states

The patient's longest period of not drinking has not exceeded 12 days. Maximum consumption is four to six bourbons, a six pack daily. . . Insight is partial. Social judgment is impaired by drinking. Depression. . . . [H]e came into the emergency room . . . with a chief complaint of needing help for his drinking. He is depressed over this situation and separation from wife. The patient relates that he had been 'drunk' since Thursday when he and his wife had a fight which resulted in the patient leaving their home and staying in a motel; where the patient proceeded to drink even more, remaining drunk until today. The patient relates that he typically consumes a half pint to four to five shots of bourbon and a six-pack of beer per day and has been doing so for over two years.

*Id.* On January 26, 1992, the Individual was hospitalized for "alcohol dependency disorder." *Id.* at 15. The Individual's medical records indicate that upon admission, he had a blood alcohol level of .258 and was suffering from anemia that resulted from excessive alcohol use. *Id.* at 16.

These medical records further indicate that the Individual prematurely left this treatment program against the advice of physicians. The Individual testified that he attended and completed a third alcohol treatment program in 1995, after he failed a random alcohol test at work. Tr. at 9, 19-22. However, neither he nor the DOE has submitted any records documenting the Individual's third course of treatment.

On November 1, 1993, the Individual was examined by a DOE Psychiatrist. On November 4, 1993, the DOE Psychiatrist issued a report of examination in which he diagnosed the Individual with alcohol dependence and sociopathic anti-social personality disorder. DOE Exhibit 15 at 5.

On October 11, 2006, the Individual was examined by the DOE Psychologist. The DOE Psychologist issued a report on the same day articulating his opinion that the Individual is alcohol dependent. DOE Exhibit 14 at 9. The DOE Psychologist also concluded that he lacked sufficient information to conclude that the Individual has an anti-social personality disorder. *Id.* at 8. However, the DOE Psychologist did conclude that the Individual has "anti-social traits." *Id.* at 8-9. The DOE Psychologist's report notes that, at the time of the examination, the Individual was still in denial about his alcohol disorder and was continuing to use alcohol. *Id.* at 10. The DOE Psychologist's report opines that, in order to establish reformation or rehabilitation, the Individual would need to abstain from the use of alcohol for at least two years and to receive continued follow-up treatment. At the hearing, the DOE Psychologist convincingly reiterated these conclusions, noting that the Individual has met four of the criteria for alcohol dependence set forth in the DSM-IV. Tr. at 94. Specifically, the DOE Psychologist testified that the Individual met the DSM-IV criteria because he had developed a high tolerance for alcohol, exhibited an inability to stop drinking alcohol, spent an inordinate amount of time obtaining or using alcohol, and continued using alcohol even though it had caused him physical or psychological problems. *Id.* at 94-96.

In an attempt to undermine the alcohol dependence diagnosis, the Individual has submitted evidence that he was examined by a Forensic Psychologist with highly impressive credentials. Interestingly, the Individual did not call the Forensic Psychologist to testify on his behalf at the hearing. In fact, the Individual did not offer any expert testimony in support of his contention that he was not properly diagnosed with alcohol dependence. However, the Individual has submitted a copy of the Forensic Psychologist's report into the record. That report convincingly argued that there is insufficient evidence to conclude that the Individual has anti-social personality traits. Forensic Psychologist's Report at 7. The Forensic Psychologist's report does acknowledge that the Individual "has a past history of alcohol use problems." *Id.* However, the Forensic Psychologist's Report notes that none of the alcohol screening tests administered to the Individual by the DOE Psychologist indicated that the Individual has a current alcohol problem.<sup>3</sup> Apparently on that basis, the Forensic Psychologist concluded that the Individual is not alcohol dependent.

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<sup>3</sup> The DOE Psychologist testified very convincingly that the Individual provided misleading or false responses to a number of questions posed by these screening tests. Tr. at 87-93. The DOE Psychologist further testified that had the Individual answered these questions accurately, the tests would have indicated that the Individual has an alcohol disorder. *Id.* at 92.

I find that the Individual is properly diagnosed with alcohol dependence. At least four medical or mental health professionals have concluded that the Individual is alcohol dependent. One mental health professional, the Forensic Psychologist, has examined the Individual and found otherwise. However, there is no evidence in the record that indicates that the Forensic Psychologist had the same information before him as the other four professionals did.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing, Case No. VSO-0244*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing, Case No. VSO-0154*, 26 DOE ¶ 82,794 (1997) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his Alcohol Dependence. After considering all of the evidence in the record, I find that he has not done so.

The Individual is still consuming alcohol and fails to acknowledge that he has a problem with alcohol. Tr. at 8-9; 29. He maintains, however, that he has reduced his alcohol consumption. *Id.* at 28. The Individual further testified that he expects to continue consuming alcohol. *Id.* at 42. He initially asserted that he has never had problems with alcohol, but then admitted he may have abused alcohol once or twice. *Id.* at 8. The Individual subsequently testified that he had voluntarily obtained inpatient alcohol treatment on two occasions and was required to undergo a third course of inpatient alcohol treatment. *Id.* at 9-10. After admitting that, at one point, he was drinking a half-pint of bourbon followed by some beer chasers each day, the Individual testified that he might have had a problem with alcohol in the past. *Id.* at 11-12.

The testimony of the DOE Psychologist convinced me that the Individual is not sufficiently reformed or rehabilitated to resolve the security concerns raised by his alcohol dependence. The DOE Psychologist remained in the hearing room and observed the testimony of the Individual. The DOE Psychologist was then called to the stand. At this point, the DOE Psychologist testified that, in his opinion, the Individual had not shown that he had been sufficiently reformed or rehabilitated. *Id.* at 100. Specifically, the DOE Psychologist testified that the Individual has been diagnosed with alcohol dependence and that alcohol dependence is a lifetime condition. *Id.* at 97. Noting that the Individual continues to use alcohol despite his alcohol dependence disorder, the DOE Psychologist testified that the Individual has not exhibited reformation or rehabilitation from his disorder. *Id.* at 97-102. I found the DOE Psychologist's testimony to be credible and entitled to great weight. I therefore conclude that the Individual has not resolved the security concerns raised by his diagnosis of Alcohol Dependence.

#### IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria H and J. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access

authorization should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: November 5, 2007